

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

UNITED STATES OF AMERICA, ) CR 06-55-M-DWM  
                              )  
Plaintiff,                )  
                              )  
vs.                        ) ORDER  
                              )  
JERALD ELMO BROBST,     )  
                              )  
Defendant.                )  
                              )

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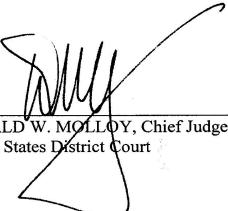
United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this matter on March 5, 2007. Defendant Brobst did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Brobst seeks to suppress statements he made to Lake County Sheriff's Deputies while they were executing a search warrant in

his residence. Judge Lynch held a suppression hearing on the matter on February 28, 2007. After review I find no clear error with Judge Lynch's recommendations and adopt them in full. I concur that Brobst was not "in custody" for purposes of *Miranda* and based on the totality of the circumstances a reasonable person would feel free to leave. *Stansbury v. California*, 511 U.S. 318, 322 (1994); *United States v. Beraun-Panez*, 812 F.2d 578, 580, modified by 830 F.2d 127 (1987).

Accordingly, IT IS HEREBY ORDERED that the motion to suppress (dkt #20) is DENIED.

DATED this 16<sup>th</sup> day of March, 2007.

  
DONALD W. MOLLOY, Chief Judge  
United States District Court